

**EXHIBIT G**

Steven A. Haist, M.D.

Thomas vs. ECFMG, et al.

January 17, 2014

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

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MATHEW THOMAS, JR. : CIVIL ACTION  
vs. :  
ECFMG, et al. : NO. 13-3946  
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Friday, January 17, 2014

COPY

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Oral deposition of STEVEN A. HAIST, M.S., M.D.,  
held at NATIONAL BOARD OF MEDICAL EXAMINERS, 3750  
Market Street, Philadelphia, Pennsylvania, beginning at  
approximately 11:45 a.m., on the above date, before  
LANCE A. BRUSILOW, Registered Professional Reporter,  
Approved Reporter for the United States District Court,  
and Notary Public, there being present.  
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<p>APPEARANCES</p> <p>SOUTHERN MEDICAL GROUP BY: MATHEW THOMAS, JR., M.D. 326 East 149th Street Bronx, NY 10541 ph: 718.585.6262 (mthomas1@sbhny.org) Counsel for Plaintiff</p> <p>MORGAN, LEWIS &amp; LEWIS, LLP BY: ELISA P. McENROE, ESQUIRE 1701 Market Street Philadelphia, PA 19103-2921 ph: 215.963.5917 (emcenroe@morganlewis.com) Counsel for ECFMG and William C. Kelly, M.S.</p> <p>HAMBURG &amp; GOLDEN, P.C. BY: MAUREEN P. HOLLAND, ESQUIRE 1601 Market Street, Suite 3310 Philadelphia, PA 19103-143 ph: 215.255.8584 (hollandmp@hamburg-golden.com) Counsel for Gerard F. Dillon, M.D., Steven Haist, M.D. and Janet Carson, Esquire</p> <p>NATIONAL BOARD OF MEDICAL EXAMINERS BY: SUZANNE WILLIAMS, ESQUIRE 3750 Market Street Philadelphia, PA 19104-3102 Ph: 215.590.9538 (swilliams@nbme.org) Counsel for NBME</p>	<p>1 which I did.</p> <p>2 I owed Uncle Sam, the government, National</p> <p>3 Health Service Corps, two years and paid that back,</p> <p>4 then started on faculty at the University of Kentucky</p> <p>5 in 1987.</p> <p>6 Q. While you were on faculty were you a</p> <p>7 practicing physician as well?</p> <p>8 A. Oh, yes.</p> <p>9 Q. As a faculty member, what were you teaching?</p> <p>10 A. Let's see. I ran three different</p> <p>11 physical-diagnosis courses. We went through a</p> <p>12 curriculum revision in there over the first nine years.</p> <p>13 On faculty, so I started interviewing physical</p> <p>14 diagnosis, physical examinations, and sort of early</p> <p>15 clinical reasoning.</p> <p>16 I ran the four-week internal medicine</p> <p>17 primary-care clerkship for six years, and I was</p> <p>18 associate program director and residency program</p> <p>19 director for five years, and the associate program</p> <p>20 director was for four or five years before that.</p> <p>21 Let's see if there were any other main</p> <p>22 education -- I started the standardized patient program</p> <p>23 at the University of Kentucky and was involved with a</p> <p>24 lot of different assessments in internal medicine; had</p>
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<p>1 (It is hereby agreed by and among</p> <p>2 counsel that signing, sealing, certification and</p> <p>3 filing are waived; and that all objections, except</p> <p>4 as to the form of the question, are reserved until</p> <p>5 the time of trial)</p> <p>6 STEVEN A. HAIST, M.D., M.S., having</p> <p>7 been first duly sworn, was examined and testified</p> <p>8 as follows:</p> <p>9 (EXAMINATION)</p> <p>10 BY DR. THOMAS:</p> <p>11 Q. Good morning, Dr. Haist. How are you?</p> <p>12 A. Fine, thanks.</p> <p>13 Q. Just for the record, could you please say your</p> <p>14 full name?</p> <p>15 A. Yes: Steven A. Haist.</p> <p>16 Q. Would you spell your last name, please?</p> <p>17 A. H-a-i-s-t.</p> <p>18 Q. Could you please tell me your educational</p> <p>19 training?</p> <p>20 A. I went to Center College and got a BS in</p> <p>21 Chemistry in 1977 with the University of Kentucky</p> <p>22 Medical School. I graduated in 1981. I did an</p> <p>23 internal medicine residency at the same institution,</p> <p>24 and was asked to stay on as chief resident in '84/'85,</p>	<p>1 a very junior faculty member running the internal</p> <p>2 medicine clerkship; and I was in charge of the</p> <p>3 evaluation of the clerkship and worked with him for the</p> <p>4 first three or four years that he was doing it, help</p> <p>5 him get his legs under him.</p> <p>6 Q. Currently are you working as a practicing</p> <p>7 physician?</p> <p>8 A. No; I was, up until a year and a half ago.</p> <p>9 Q. What do you do now?</p> <p>10 A. Same thing I was doing since 2008: I work in</p> <p>11 test development services at the National Board of</p> <p>12 Medical Examiners.</p> <p>13 Q. Test exam services?</p> <p>14 A. TDS: Test Development Services.</p> <p>15 Q. Can you please tell me what your role is?</p> <p>16 A. Vice-president for test development services.</p> <p>17 Q. What are your job responsibilities under that</p> <p>18 title?</p> <p>19 A. Overseeing the development of test materials</p> <p>20 for multiple different examinations.</p> <p>21 Q. When were you first hired by NBME?</p> <p>22 A. July 7, 2008.</p> <p>23 Q. Before coming on to NBME as the test</p> <p>24 development services VP, did you do any other work for</p>

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<p style="text-align: right;">Page 6</p> <p>1 NBME?</p> <p>2 A. Yes: I was a committee member for fourteen</p> <p>3 years.</p> <p>4 Q. Which committee, please?</p> <p>5 A. Committees: I was initially on the</p> <p>6 introduction to clinical medicine committee for three</p> <p>7 years; after that I was on the behavioral science</p> <p>8 committee for three years, then I was on the physiology</p> <p>9 committee for eight, the last four as its chair; and in</p> <p>10 there I was also on a number of different review</p> <p>11 committees, interdisciplinary review committees for</p> <p>12 Step 1 and I was on the Step 1 committee, I believe,</p> <p>13 the last two years before I came to work here.</p> <p>14 Q. When you say "the Step 1 committee," what was</p> <p>15 your role on that committee?</p> <p>16 A. Committee member.</p> <p>17 Q. What was the responsibility of that committee?</p> <p>18 A. They oversee Step 1.</p> <p>19 Q. Anything specific that comes before that</p> <p>20 committee --</p> <p>21 A. It depends. Can be. Everything from tests to</p> <p>22 committee members to test-specification changes, to any</p> <p>23 number of things.</p> <p>24 Q. How often would you say that committee meets?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. And Step 2 CK is every question that is taken</p> <p>2 on an exam date used toward the final score?</p> <p>3 A. No.</p> <p>4 Q. How much say does your department get in which</p> <p>5 questions are used in the final score?</p> <p>6 A. Zero.</p> <p>7 Q. Is there an ability for all questions to be</p> <p>8 used in the final score?</p> <p>9 MS. HOLLAND: Objection, calls for</p> <p>10 speculation. You can answer.</p> <p>11 THE WITNESS: Okay. A number of</p> <p>12 questions are pre-test, so all questions are</p> <p>13 pre-tested before they end up on a live</p> <p>14 examination.</p> <p>15 BY DR. THOMAS:</p> <p>16 Q. So, could you please explain that pre-test</p> <p>17 category?</p> <p>18 A. That they had never been seen on a live</p> <p>19 examination before, and they go on the examination to</p> <p>20 get statistics.</p> <p>21 Q. Approximately how many questions on an exam</p> <p>22 would be pre-test?</p> <p>23 A. How vague do you want me to be? Because we</p> <p>24 don't tell anybody that.</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Twice a year.</p> <p>2 Q. During your membership on these committees</p> <p>3 were you an NBME employee?</p> <p>4 A. No.</p> <p>5 Q. Do you have any certifications or licenses</p> <p>6 outside of the degrees you told me?</p> <p>7 A. I'm board certified in internal medicine.</p> <p>8 I've got a Masters in Medical Education. I don't think</p> <p>9 there is anything else. I mean, I've got state medical</p> <p>10 licenses in Kentucky and Pennsylvania.</p> <p>11 Q. Do you have any certifications, licenses or</p> <p>12 background in statistics?</p> <p>13 A. Not outside what my masters degree had. I had</p> <p>14 four or five courses in statistics.</p> <p>15 Q. Under your current title as VP of test</p> <p>16 development services, could you tell me specifically</p> <p>17 what role you play in the Step 2 CK exam?</p> <p>18 A. The staff of test development services runs</p> <p>19 the committees where the questions are generated and</p> <p>20 the committees where the questions are reviewed, and my</p> <p>21 staff run the computer software that puts the</p> <p>22 examination together. And we, you know -- I guess</p> <p>23 that's pretty much it in a nutshell, involvement with</p> <p>24 Step 2 CK.</p>	<p style="text-align: right;">Page 9</p> <p>1 MS. HOLLAND: Yes, objection. That's</p> <p>2 privileged information. I'm going to instruct you</p> <p>3 not to answer that question.</p> <p>4 DR. THOMAS: Okay.</p> <p>5 BY DR. THOMAS:</p> <p>6 Q. What is the process once you pre-test these</p> <p>7 questions to become permanent questions?</p> <p>8 A. The question is statistics-generated and is</p> <p>9 has to meet certain statistical criteria, including</p> <p>10 positive correlation with the rest of the examination.</p> <p>11 The question is then reviewed by the interdisciplinary</p> <p>12 review committee for Step 2.</p> <p>13 It's got at least one specialist from each of</p> <p>14 the major disciplines -- two internal medicine, one</p> <p>15 surgery, one psychiatry, one OB/GYN, and one</p> <p>16 pediatrician -- to review the questions, including the</p> <p>17 pre-test ones, and approve them for live use.</p> <p>18 Q. How long would a test question be pre-test --</p> <p>19 how long would it stay as a pre-test question before it</p> <p>20 comes to the. . .</p> <p>21 A. One year.</p> <p>22 Q. One year. The statistics that are run on</p> <p>23 these questions, is it a person or a program that runs</p> <p>24 the statistics?</p>

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<p>1 A. A program.</p> <p>2 Q. Can you tell me the name of the program?</p> <p>3 MS. HOLLAND: Objection, relevance.</p> <p>4 You can answer.</p> <p>5 THE WITNESS: I'm not sure. I think</p> <p>6 it's SPSS, but I'm not sure.</p> <p>7 BY DR. THOMAS:</p> <p>8 Q. Do you know the methodology of analytics that</p> <p>9 are done by the program?</p> <p>10 A. Yes. I mean, it's percent correct and a</p> <p>11 reliability coefficient.</p> <p>12 Q. When determining if these questions are going</p> <p>13 to go live, do you go by the report given by the</p> <p>14 program?</p> <p>15 A. I'm not sure what you're asking.</p> <p>16 Q. Is there a criteria that has to be met for the</p> <p>17 committee to say "this should go live" or is it a</p> <p>18 committee decision?</p> <p>19 A. It's a committee decision.</p> <p>20 Q. How much background do you have in analytics</p> <p>21 to understand a relative coefficient?</p> <p>22 A. Reliability coefficient.</p> <p>23 Q. Or reliability coefficient.</p> <p>24 A. Four or five courses, and we have a</p>	<p>1 Q. Could you identify what kind of material it</p> <p>2 was?</p> <p>3 A. They were test questions.</p> <p>4 Q. Can you identify, was it test questions with</p> <p>5 answers or just questions?</p> <p>6 A. Well, test questions with answers.</p> <p>7 Q. Do you know --</p> <p>8 A. At least a lot of the ones that I saw were.</p> <p>9 Q. Can you tell me approximately how many</p> <p>10 questions you saw?</p> <p>11 A. Hundreds. I don't know an exact number, but</p> <p>12 it's several hundred.</p> <p>13 Q. Is "several hundred" closer to under 500, or</p> <p>14 is several hundred closer to a thousand?</p> <p>15 A. I don't know. I don't know. It was in</p> <p>16 multiple different batches over a period of time.</p> <p>17 Q. Can you tell me in what format they were given</p> <p>18 to you?</p> <p>19 A. Paper copies, photocopies.</p> <p>20 Q. Were you given anything electronic?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Once given those questions, what was the role</p> <p>23 you were supposed to play with them?</p> <p>24 A. I reviewed, you know, a number of them and</p>
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<p>1 psychometrician in test development services that works</p> <p>2 with us as well as psychometricians in scoring</p> <p>3 services.</p> <p>4 Q. And are all of them certified in analytics?</p> <p>5 A. I do not believe there is a certification for</p> <p>6 psychometricians.</p> <p>7 Q. Is there --</p> <p>8 A. But they all have Ph.D.s in psychometrics.</p> <p>9 Q. And do they have any certifications, degrees</p> <p>10 in statistics?</p> <p>11 A. I don't think there is any certification in</p> <p>12 statistics, or at least not that I'm aware of.</p> <p>13 Q. Is there a degree, any degree background?</p> <p>14 A. Yes: They all have Ph.D.s in a</p> <p>15 psychometric-related field.</p> <p>16 Q. Okay.</p> <p>17 A. Which is essentially statistics.</p> <p>18 Q. Did you have any direct involvement in the</p> <p>19 investigation with Optima University?</p> <p>20 A. I was asked to look at materials after the</p> <p>21 fact.</p> <p>22 Q. Do you know where those materials came from?</p> <p>23 A. Where they came from. They came from the</p> <p>24 investigation. I don't know who had them.</p>	<p>1 then we actually would run a program to look for</p> <p>2 matches to our item pool.</p> <p>3 Q. And what program was that?</p> <p>4 MS. HOLLAND: Objection, relevance.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: I'm not sure which it is.</p> <p>7 BY DR. THOMAS:</p> <p>8 Q. Who entered the questions into the program?</p> <p>9 MS. HOLLAND: Objection to relevance.</p> <p>10 You can answer.</p> <p>11 THE WITNESS: Staff.</p> <p>12 BY DR. THOMAS:</p> <p>13 Q. Did anyone oversee to reconcile that it was</p> <p>14 correctly entered?</p> <p>15 A. That's something that we don't really -- we</p> <p>16 don't need to do.</p> <p>17 Q. Is the answer yes or no?</p> <p>18 A. I'm sorry?</p> <p>19 Q. The question is, did anyone reconcile to make</p> <p>20 sure it was correctly entered.</p> <p>21 A. Not that I'm aware of.</p> <p>22 Q. Did you do any direct entry of questions into</p> <p>23 the program?</p> <p>24 A. No.</p>

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1 Q. Approximately how many staff would you say  
2 were involved in entering the data?  
3 A. It was over a period of time. I'm not really  
4 sure. There were several, but not many.  
5 Q. When they entered these questions, was it just  
6 the questions or the questions and the answer choices?  
7 A. It was usually both. It was all the data that  
8 was available.  
9 Q. Once entered, do you know how many came up as  
10 a match?  
11 A. I don't know.  
12 Q. What would you consider a match?  
13 A. Where the content was very similar and there  
14 were a number of them that were word-for-word --  
15 actually most of them were word-for-word other than  
16 maybe a comma or period, including the option choices.  
17 Q. If a question was not word-for-word but you  
18 say the content was similar, would you consider that a  
19 match?  
20 A. No, we would consider that a possible.  
21 Q. A possible. Did you degree that possibility,  
22 meaning did you give a higher weight?  
23 A. No.  
24 Q. So, it was either possible or a match or not a

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1 match.  
2 A. That was how I was looking at the stuff.  
3 Q. If a question came back as a match, what would  
4 be the next step?  
5 A. We were just identifying the questions as  
6 whether they were or not, and then they went to look --  
7 they went to look to see if they were all on one  
8 examination because there are multiple forms of the  
9 exam.  
10 Q. Did you find --  
11 A. Yes.  
12 Q. -- that they were found --  
13 A. Yes, multiple forms of the exam.  
14 Q. Are multiple forms at the specific location?  
15 MS. HOLLAND: I'm going to object to  
16 the question on the basis of relevance, unless Dr.  
17 Thomas can articulate how this is relevant to his  
18 claim.  
19 DR. THOMAS: I believe in the Optima  
20 investigation they claim that they were stolen  
21 abroad, so I'm trying to see whether questions  
22 here are seen abroad or questions are only seen in  
23 the US.  
24 MS. HOLLAND: If you want to ask that

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1 question, then that's a different question. I  
2 won't object to that question.  
3 DR. THOMAS: Okay.  
4 BY DR. THOMAS:  
5 Q. So, when you say there are difficult forms,  
6 are specific forms in specific countries or regions, or  
7 are they anywhere within the world?  
8 A. Anywhere.  
9 Q. If you found that a form was found to be in  
10 this database you received, what happened to those  
11 questions afterwards?  
12 A. They were taken out of the live pool.  
13 Q. Just clarify: Several hundred questions that  
14 may have come up as --  
15 A. Oh, no, it was more than that. I said several  
16 hundred I looked at.  
17 Q. Let me rephrase --  
18 A. There were several thousand questions.  
19 Q. So, how many questions would you say you were  
20 given to review, you, your staff, your department?  
21 A. That's a different question. Several  
22 thousand.  
23 Q. Can you give me more definite number?  
24 MS. HOLLAND: Objection. I'm going to

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1 instruct the witness not to answer unless Dr.  
2 Thomas can articulate why it's relevant.  
3 DR. THOMAS: Was there a difference  
4 between 2,000 questions and several thousand  
5 questions.  
6 MS. McENROE: I understand --  
7 DR. THOMAS: Or several -- I just want  
8 to know what he means by "several."  
9 MS. McENROE: But again, the relevance  
10 to your particular claim is --  
11 DR. THOMAS: It goes back to your saying  
12 that my questions were matched up against this  
13 bank, then I want to know exactly how big of a  
14 pool you had to match up my exam to.  
15 MS. HOLLAND: I'm going to instruct the  
16 witness not to answer. I don't believe that's  
17 relevant at all.  
18 DR. THOMAS: The relevance also comes  
19 because I've claimed multiple times that there  
20 were not many questions when I was there, so that  
21 would be my other thing. But if you don't want  
22 him to answer, that's fine.  
23 BY DR. THOMAS:  
24 Q. When given these questions, was there a date

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1 stamp?  
 2 MS. HOLLAND: Objection, vague.  
 3 A. I don't remember.  
 4 Q. Based on what you were given, could you tell  
 5 when a question was added to the database that they got  
 6 the questions from?  
 7 A. No.  
 8 Q. So, you were saying before, if a question came  
 9 up as a match, what was the next step?  
 10 A. I said it was removed from the live pool. . .  
 11 Q. Approximately --  
 12 A. . . so it wouldn't be used again.  
 13 Q. Approximately how many questions were removed  
 14 from the live pool?  
 15 A. Several thousand.  
 16 Q. And approximately when were they removed from  
 17 the live pool?  
 18 A. I have to go back and look. 2009? I'm not  
 19 sure the month or year. It was in that time frame  
 20 between eight and ten.  
 21 Q. Do you remember when you were first given the  
 22 questions to review, or your staff?  
 23 A. No, I don't.  
 24 Q. Do you remember approximately what year?

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1 A. Similar time period.  
 2 Q. Would you say early 2009 or late 2009?  
 3 A. I don't remember. It was ongoing and could  
 4 have spanned early and late 2009.  
 5 Q. If questions were found at Optima University,  
 6 who would be the first to review them?  
 7 MS. HOLLAND: Objection, vague.  
 8 Q. If questions were found at Optima University,  
 9 would your department be the first to determine whether  
 10 they were actually USMLE questions?  
 11 A. We were part of the process. They weren't the  
 12 first ones ever to touch the question, no.  
 13 Q. Not touch the questions, but in order to  
 14 determine whether they were a match, which  
 15 department --  
 16 A. It started in test development.  
 17 Q. When did the testing finish?  
 18 MS. HOLLAND: Objection, vague.  
 19 Q. You received thousands of questions that were  
 20 said to come from Optima University and they were  
 21 matched up through a program. When did your review  
 22 process get completed for all questions?  
 23 A. I'm not sure what the exact date was. I want  
 24 to say it was whenever -- I don't know. 2010. I'm not

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1 sure.  
 2 Q. Based on the data you received regarding  
 3 matches, how was that then related to students that  
 4 went to Optima University?  
 5 MS. HOLLAND: Objection, vague.  
 6 Q. Are you aware of the investigation with Optima  
 7 University?  
 8 A. Yes.  
 9 Q. Are you aware of the allegations against  
 10 students at Optima University?  
 11 A. Not specifics.  
 12 Q. What is your understanding of the questions  
 13 that they used in the Optima University test bank?  
 14 MS. HOLLAND: Objection, vague.  
 15 Q. What is your understanding as to why you were  
 16 testing the questions you received?  
 17 A. Because there was some thought that they were  
 18 stolen copyrighted material.  
 19 Q. So, if they were thought to be stolen or  
 20 copyrighted --  
 21 A. They were copyrighted, stolen copyrighted  
 22 material.  
 23 Q. If they were stolen copyrighted material, what  
 24 then were the steps taken for students who went to

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1 Optima University?  
 2 A. That is not part of my job. I have no idea.  
 3 Q. Students were given data in writing regarding  
 4 their exams versus questions that were found in the  
 5 Optima University data bank: Were you involved in that  
 6 process or your department involved in that process at  
 7 all?  
 8 A. No.  
 9 Q. Would you know who was involved in that  
 10 process or who headed that process?  
 11 A. I probably know a few people that were  
 12 involved in it, like Dr. Dillon, who I think is on this  
 13 afternoon, but I'm not sure about individuals. He's  
 14 the head of USMLE, so I'm sure he was involved somehow.  
 15 Q. Were you ever contacted or asked to review the  
 16 examination taken by Mathew Thomas on December 31st,  
 17 2007?  
 18 A. Yes. I was asked by Dr. Dillon to look and  
 19 see if that examination was similar to the examination  
 20 that was taken also in 2007 and compare those two  
 21 examinations.  
 22 Q. Were you ever asked to review Dr. Thomas' exam  
 23 Step 2 CK on December 31st, 2007 with regard to his  
 24 questions matching the Optima test bank?

6 (Pages 18 to 21)

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1 A. No.  
 2 Q. Were you asked to be involved in any student  
 3 from Optima University --  
 4 MS. HOLLAND: Objection as to the  
 5 relevance.  
 6 DR. THOMAS: Because if he goes down  
 7 that line, I would go on questioning. If he says  
 8 no, then I'm done with my line of questioning.  
 9 MS. HOLLAND: What would the relevance  
 10 be with regard to any other student?  
 11 DR. THOMAS: Because that would give  
 12 knowledge as to the assessment done on those  
 13 questions.  
 14 MS. HOLLAND: Okay, the witness can  
 15 answer.  
 16 THE WITNESS: I don't recall looking at  
 17 any particular other student's, you know,  
 18 questions.  
 19 DR. THOMAS: All right.  
 20 BY DR. THOMAS:  
 21 Q. Just to clarify: When a question came up as a  
 22 match and when it's then removed from the live bank,  
 23 who made the determination to remove it from the bank?  
 24 A. It was a multi-unit decision.

Page 23

1 Q. Was there a final person who decided as a  
 2 final. . .  
 3 A. No, I don't believe so.  
 4 Q. Was there a committee that made a decision?  
 5 A. There was a lot of input from scoring  
 6 services, from test development and from USMLE. I  
 7 guess the final call is USMLE since they oversee the  
 8 management.  
 9 Q. So, from the NBME standpoint as test  
 10 development and USMLE as the test itself, what is the  
 11 relationship?  
 12 A. The USMLE is jointly owned by the Federation  
 13 of State Medical Boards and the National Board of  
 14 Medical Examiners, and it's one of the test programs  
 15 that we participate in.  
 16 Q. So, USMLE has final say to take the question  
 17 out of the live --  
 18 A. Well, they have final say with anything that  
 19 goes on to -- well, governance does, with their exam.  
 20 It could be a step committee; it could be a composite  
 21 committee.  
 22 Q. For NBME or USMLE?  
 23 A. It would be USMLE for step committee, and  
 24 composite committee is a --

Page 24

1 THE WITNESS: Is it a committee of --  
 2 I'm not sure if it's "a USMLE committee." It's  
 3 made up of ECFMG, NBME and Federation State  
 4 Medical Boards. And I'm not sure, you know, who  
 5 owns it or. . .  
 6 BY DR. THOMAS:  
 7 Q. So, who would do the final signoff on taking a  
 8 live question and making it -- take it out of the live  
 9 bank?  
 10 A. Probably it would be test development and  
 11 assessment -- USMLE assessment programs. That would  
 12 not be something that would be done by governance.  
 13 Q. So, any question that was taken out of the  
 14 live bank, would you have to be the one to sign off on  
 15 removing it since you're in test development?  
 16 A. Actually, I'm trying to remember when it  
 17 switched, because part of the time in there -- I was  
 18 associate vice-president of test development when I  
 19 first started, then I became vice-president in January  
 20 of 2010.  
 21 Those decisions were probably -- weren't made  
 22 by me but were made by, you know, the same person that  
 23 was or had my position then.  
 24 Q. Do you remember who that person was?

Page 25

1 A. Yes: David Swanson.  
 2 Q. For the questions that came from the Optima  
 3 test bank, how many would you say you specifically  
 4 signed off on removing from the live bank?  
 5 A. I don't think I signed off on any of those or  
 6 if they were actually removed before mid-January of  
 7 2010. I reviewed questions, but I didn't, you know,  
 8 sign off on having them removed.  
 9 Q. From the time you were given the questions to  
 10 review until the time they were taken out of the live  
 11 bank, can you approximate how long that would take?  
 12 A. Could be as short as, you know, a month; could  
 13 be as long as six months, depending on how long it was  
 14 taking to do the matches.  
 15 If we only had one question to look at, we can  
 16 probably do that in less than a day. But as I said,  
 17 there were a lot more than one or two questions; there  
 18 were thousands.  
 19 Q. So, would you wait for the full thousand to be  
 20 done to remove a question, or is it as you get a match  
 21 you started the process?  
 22 A. I think they were looked at in batches.  
 23 Q. In batches, okay. Are you aware of how many  
 24 batches you received?

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 26</p> <p>1 MS. HOLLAND: Objection, irrelevant.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: No. There were, as I</p> <p>4 said, several thousand questions. They were not</p> <p>5 all done at the same time.</p> <p>6 BY DR. THOMAS:</p> <p>7 Q. If you received questions that were possible</p> <p>8 matches, did NBME or USMLE take any steps to suspend</p> <p>9 those questions until they took them out of the live</p> <p>10 pool permanently?</p> <p>11 A. No, I don't believe so.</p> <p>12 Q. Is it safe to say, then, that questions that</p> <p>13 may have come and were being reviewed as a match would</p> <p>14 stay in the live pool as long as six months after you</p> <p>15 were notified of them?</p> <p>16 A. Well, they wouldn't get removed before that</p> <p>17 because we wouldn't know that they were in our pool or</p> <p>18 not.</p> <p>19 There were questions, if I'm not mistaken,</p> <p>20 that were actually from the self-assessment practice</p> <p>21 questions, then questions that are on live examinations</p> <p>22 both for Step 1 and for Step 2 CK.</p> <p>23 Q. The self-assessment questions, could you</p> <p>24 please explain what those are?</p>	<p style="text-align: right;">Page 28</p> <p>1 MS. HOLLAND: I'm going to instruct the</p> <p>2 witness not to answer that question.</p> <p>3 BY DR. THOMAS:</p> <p>4 Q. Would you say there were many questions that</p> <p>5 were not part of your live pool in the questions you</p> <p>6 reviewed from the Optima bank?</p> <p>7 A. The vast majority were on the live pool. I</p> <p>8 don't remember what percentage, but it was a sizeable</p> <p>9 percent. It was a vast majority.</p> <p>10 Q. Would you be able to give those percentages?</p> <p>11 A. Oh, not without going upstairs and trying to</p> <p>12 dig up or have somebody else dig up the files on the</p> <p>13 number of questions that were viewed and how many were</p> <p>14 matches.</p> <p>15 DR. THOMAS: I would like to put on</p> <p>16 record that I would like that information.</p> <p>17 MS. HOLLAND: Okay.</p> <p>18 MS. McENROE: Let's take a quick break.</p> <p>19 DR. THOMAS: Fine.</p> <p>20 (A brief recess was taken)</p> <p>21 MS. HOLLAND: We're back on the record.</p> <p>22 For the protection of the integrity of the</p> <p>23 examination -- and as you're aware, the test</p> <p>24 materials are all copyrighted -- I'm going to</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Those are what it says: Students can take</p> <p>2 self-assessment examinations, and I guess there are</p> <p>3 practice exams for Steps 2 and 3 as well. They can take</p> <p>4 questions and get some feedback as to whether they got</p> <p>5 the right answer or not.</p> <p>6 Q. Who puts out those self-assessment questions?</p> <p>7 A. The NBME.</p> <p>8 Q. Is there a financial cost for those questions?</p> <p>9 A. Yes. I'm not sure what they charge per exam.</p> <p>10 Q. Are those questions still live questions?</p> <p>11 A. No.</p> <p>12 Q. Could different variations of those questions</p> <p>13 be live questions?</p> <p>14 A. No.</p> <p>15 Q. Who decides if a question will be taken out</p> <p>16 and put on the self-assessment exam?</p> <p>17 MS. HOLLAND: Objection, relevance.</p> <p>18 DR. THOMAS: In my hearing originally I</p> <p>19 said that there were self-assessment exams and</p> <p>20 live exams.</p> <p>21 MS. HOLLAND: What does that have to do</p> <p>22 with the claims?</p> <p>23 DR. THOMAS: I just want to know who</p> <p>24 makes them.</p>	<p style="text-align: right;">Page 29</p> <p>1 object to any further questions that pertain to</p> <p>2 test content as well as the ongoing investigation</p> <p>3 into Optima University.</p> <p>4 Because that investigation is underway,</p> <p>5 I'm going to instruct my witnesses not to answer</p> <p>6 any questions about the size of the question bank</p> <p>7 or anything pertaining to the investigation that's</p> <p>8 still going on.</p> <p>9 And based particularly on your</p> <p>10 testimony that you gave at your deposition on</p> <p>11 Friday, the 10th of January, that you're still in</p> <p>12 contact with people from Optima University, we</p> <p>13 have particular concerns about the integrity of</p> <p>14 the tests.</p> <p>15 So, for that reason I'm going to</p> <p>16 instruct the witness not to answer your previous</p> <p>17 question.</p> <p>18 DR. THOMAS: My understanding is that</p> <p>19 the case against Optima University is completed</p> <p>20 and a verdict was already put against them, that</p> <p>21 there is no open investigation.</p> <p>22 MS. HOLLAND: Well, I am going to</p> <p>23 instruct my witness not to answer and we'll move</p> <p>24 on from there.</p>

8 (Pages 26 to 29)

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1 DR. THOMAS: That's fine.  
 2 BY DR. THOMAS:  
 3 Q. Dr. Haist, again, when were you first told  
 4 about questions at Optima University?  
 5 MS. HOLLAND: Objection. You can  
 6 answer that question.  
 7 THE WITNESS: Sometime -- I think it  
 8 was spring 2008.  
 9 BY DR. THOMAS:  
 10 Q. Before you said 2009. Was it 2009 or 2008?  
 11 A. That I first found out about it or first heard  
 12 about it? They're two different questions.  
 13 Q. Given questions from the department.  
 14 A. That's different. I heard -- it was either  
 15 late '08 or early '09 that I actually started -- no, it  
 16 wouldn't have been. It would have been '09.  
 17 I didn't start until early July. It was  
 18 either spring of '09 or mid '09 that I first heard  
 19 about it and shortly after that, I guess, saw some of  
 20 the questions.  
 21 Q. Your department would be the first to do the  
 22 matching of questions?  
 23 MS. HOLLAND: Objection, asked and  
 24 answered.

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1 BY DR. THOMAS:  
 2 Q. To your knowledge, before you took on the role  
 3 with regard to matching questions from the Optima  
 4 University test bank, did any other individual who may  
 5 have been a successor to your role do a match on any  
 6 questions?  
 7 MS. HOLLAND: Objection, that question  
 8 has been asked and answered.  
 9 DR. THOMAS: The question is whether he  
 10 had knowledge anyone before him did a match on the  
 11 questions. It's not the same when he finds out.  
 12 MS. HOLLAND: Dr. Thomas, the question  
 13 has been asked and answered.  
 14 DR. THOMAS: Can you please explain to  
 15 me when it was asked and answered?  
 16 MS. HOLLAND: No.  
 17 DR. THOMAS: Okay, I have what I need.  
 18 That's fine.  
 19 BY DR. THOMAS:  
 20 Q. What is your understanding of the case against  
 21 Optima University with regard to students and their  
 22 exam questions?  
 23 MS. HOLLAND: Objection. I'm going to  
 24 instruct the witness not to answer on the grounds

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1 I previously stated.  
 2 BY DR. THOMAS:  
 3 Q. Do you know the process that was taken to  
 4 match student questions to the Optima University test  
 5 bank?  
 6 MS. HOLLAND: Objection. I'm going to  
 7 instruct the witness not to answer on the basis  
 8 that I previously stated.  
 9 BY DR. THOMAS:  
 10 Q. Do you know the process that a student takes  
 11 if they went before a validation committee and were  
 12 told that their test was not validated?  
 13 MS. HOLLAND: Objection, calls for  
 14 speculation.  
 15 DR. THOMAS: How is it speculation? I'm  
 16 not understanding.  
 17 MS. HOLLAND: Well, I don't understand  
 18 your question.  
 19 DR. THOMAS: The question is, does he  
 20 know the process if someone comes back saying  
 21 their score is still indeterminate after a  
 22 hearing.  
 23 MS. HOLLAND: Okay, you can ask him if  
 24 he knows.

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1 THE WITNESS: I don't know.  
 2 BY DR. THOMAS:  
 3 Q. Do you know what a validation exam is?  
 4 A. Yes.  
 5 Q. Do you know how to get to a point where a  
 6 student has to take a validation exam?  
 7 A. No.  
 8 Q. What is your understanding about a validation  
 9 exam?  
 10 A. Can you be more specific? I'm not quite sure  
 11 what you're asking me.  
 12 Q. Why would a student have to take a validation  
 13 exam?  
 14 A. Because there is a question of whether the  
 15 results from the first examination are valid.  
 16 Q. Do you know if a validation exam is supposed  
 17 to be similar to the present test forms?  
 18 A. It's supposed to be comparable.  
 19 Q. Can you define "comparable"?  
 20 A. Generally the same content, similar in  
 21 structure.  
 22 Q. Structure: Could you elaborate a little bit  
 23 on structure?  
 24 A. Number of questions, prompts, those things

9 (Pages 30 to 33)

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1 generally.  
 2 Q. Length of question? Would that be part of  
 3 structure?  
 4 A. Yes, relatively speaking.  
 5 Q. The number of answers -- sorry.  
 6 A. Yes, number of answer choices, the way the  
 7 questions are structured.  
 8 Q. Are there question times such as media  
 9 questions?  
 10 A. Yes, there are.  
 11 Q. Can you define what a media question would be?  
 12 A. We call them multimedia. Usually a question  
 13 that requires probably Chrome or some sort of playback,  
 14 you know, like a video or -- yeah, like a video loop.  
 15 Q. Do all media questions have to have a video?  
 16 A. Well, they have to have some way to depict  
 17 whatever it is that's being shown, whether it's an  
 18 avatar with a heart sound or whether it's a neurologic  
 19 examination or whatever.  
 20 Q. What is the playing time on a video, standard?  
 21 A. The loop? On heart sound it's -- I'm not sure.  
 22 It's probably somewhere in the neighborhood of five  
 23 seconds where it will play again, but it's some short  
 24 period of time.

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1 Q. Is there a maximum amount of time that a media  
 2 video could be?  
 3 A. Probably the length of a block of questions.  
 4 Q. Is there any --  
 5 A. That would be the maximum.  
 6 Q. Is there a policy as to how long a specific  
 7 media file should be on the exam?  
 8 A. Not time-wise. We have -- well, actually we  
 9 don't have that many. We have experimented with some,  
 10 but we have not really had varying lengths on the exam  
 11 of videos. We have done some work in that area, but  
 12 that's one of the things that we're concerned with.  
 13 Q. Are media questions part of the live pool?  
 14 A. Well, the heart sounds.  
 15 Q. So, there are live questions that are media  
 16 questions.  
 17 MS. HOLLAND: Objection. For the  
 18 reasons I stated before about the test material  
 19 being copyrighted, I'm going to instruct my  
 20 witness not to answer.  
 21 DR. THOMAS: Okay.  
 22 BY DR. THOMAS:  
 23 Q. Were there media questions in 2007?  
 24 A. I wasn't here in 2007.

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1 Q. Would you say, based on your development  
 2 expertise in the last couple of questions, that the  
 3 media questions have increased over the last couple of  
 4 years?  
 5 A. No, not in the last couple years. No.  
 6 Q. Could you say approximately how many media  
 7 questions are on a Step 2 exam?  
 8 MS. HOLLAND: Objection again for the  
 9 same reason.  
 10 DR. THOMAS: Okay.  
 11 BY DR. THOMAS:  
 12 Q. As part of your development team, do you find  
 13 that media questions are comparable to straightforward,  
 14 factual questions in terms of time spent?  
 15 A. Oh, it's a little longer, but also the  
 16 examination in -- was it two dates, 2007 and 2011?  
 17 Q. Uh-huh.  
 18 A. The examination in 2007 was forty-six  
 19 questions per hour and the examination in 2011 was  
 20 forty-four questions per hour.  
 21 So, adjustments were made for changes in  
 22 either word length or for anything added to the  
 23 examination between those two times.  
 24 Q. How often do you change the type of questions

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1 on the USMLE?  
 2 MS. HOLLAND: Objection for the reasons  
 3 stated before.  
 4 BY DR. THOMAS:  
 5 Q. Who develops the validation exam?  
 6 A. Test development.  
 7 Q. Is there a specific validation exam as  
 8 compared to a normal exam where a student comes and  
 9 sits for the exam?  
 10 A. It's built to the same specifications. It's  
 11 not a real common occurrence. They're built to the  
 12 same specs. I'm not sure of the other.  
 13 Q. Mathew Thomas was given an exam December 31,  
 14 2007 and then told to take a validation exam in  
 15 September 2011.  
 16 Were you ever asked to create a validation  
 17 exam that was comparable to the exam that was done four  
 18 years prior?  
 19 A. No, it was built to the specification of the  
 20 2011 USMLE exam.  
 21 Q. My question is, were you asked to create a  
 22 validation exam that was comparable to 2007?  
 23 A. It was comparable to -- no, it was comparable  
 24 to the 2011 USMLE exam.

10 (Pages 34 to 37)

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1 Q. So, you're stating that the validation exam  
2 was a 2011 exam.  
3 A. Yes, because anyone passing an examination in  
4 2011 had to pass the 2011 examination specifications.  
5 Q. When was the first you were contacted  
6 regarding Mathew Thomas' validation?  
7 A. I don't know.  
8 Q. Was it before or after the exam had taken  
9 place?  
10 A. My unit would have had to have been before.  
11 Me personally, I don't remember.  
12 Q. Who in your unit would have been contacted?  
13 A. I'm not sure.  
14 Q. What would be the protocol for contacting your  
15 department for a validation exam?  
16 A. Somebody in USMLE would have contacted  
17 probably a managing editor of the particular step, but  
18 I'm not sure.  
19 Q. Would you be able to say who the manager was  
20 at that time?  
21 A. Yes: I think it was June Farrell, but I'm not  
22 positive.  
23 Q. What would that manager do as his or her next  
24 step?

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1 A. I'm not sure.  
2 Q. If a student has to take a validation exam, is  
3 it standard protocol to notify your department?  
4 A. If another examination has to be built, the  
5 answer to that would be yes, because the only place an  
6 exam is going to be built is in test development.  
7 Q. If a student has to take a validation exam and  
8 they go to the test center, is it preset for them to  
9 get that validation exam?  
10 MS. HOLLAND: Objection. For the  
11 reasons I stated before, I'm going to instruct the  
12 witness not to answer.  
13 DR. THOMAS: Okay.  
14 BY DR. THOMAS:  
15 Q. You stated before that Dr. Dillon asked you to  
16 compare the 2007 exam with the 2011 exam, yes?  
17 A. Correct.  
18 Q. What's the criteria you use to determine if  
19 tests are comparable?  
20 A. Go through the specifications on how the two  
21 examinations were built.  
22 Q. What criteria would you say, in terms of how  
23 they were built, would make a test comparable?  
24 A. Similar specifications.

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1 Q. Could you please define "specifications" for  
2 me?  
3 A. Questions from similar -- or number of  
4 questions and similar question content by organ system,  
5 by gender, etcetera.  
6 Q. Could you elaborate on that word, "content"?  
7 A. Cardiovascular disease, hypertension  
8 treatment.  
9 Q. So, would you say that a pharmacological  
10 question on treatment should also be found on the  
11 validation exam to make them comparable, or are you  
12 saying that cardiovascular treatment in general is the  
13 overall topic and they could ask either pharma or  
14 physio or patho regarding that topic?  
15 A. I think you better. . .  
16 MS. HOLLAND: Yes, I'm going to object  
17 for the reasons that we stated before. The way  
18 the test is corrected is. . .  
19 DR. THOMAS: I'm not asking about the  
20 questions. I'm asking about comparability, which  
21 is a big question of mine for the 2007 exam, and  
22 content was a question I questioned in my  
23 deposition.  
24 So, I'm asking with regard to him to

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1 clarify the word "content" because it is in his  
2 report or his response to Dr. Dillon's request to  
3 him.  
4 MS. HOLLAND: Do you want to draw his  
5 attention to the report?  
6 DR. THOMAS: I can do that. I don't  
7 have copies, so I'm going to have to. . .  
8 MS. HOLLAND: This is the third page.  
9 DR. THOMAS: Thank you for that.  
10 BY DR. THOMAS:  
11 Q. You have an email in front of you from Amy  
12 Bouno to yourself?  
13 A. Yes.  
14 MS. HOLLAND: Do you want to mark this  
15 as an exhibit?  
16 DR. THOMAS: Yes, the second one --  
17 exhibit one.  
18 MS. HOLLAND: We'll mark that as  
19 exhibit one.  
20 (Exhibit No. 1 was marked for  
21 identification)  
22 THE WITNESS: I think you'll have to  
23 rephrase that. It wasn't from Amy Bouno. It was  
24 to Amy Buono.

11 (Pages 38 to 41)



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1 BY DR. THOMAS:

2 Q. I'm sorry, to Amy Buono from yourself, and the  
3 subject line being "Comparison of Step 2 Forms." I  
4 believe that's CO-1607 and CO-2385?

5 A. That's what it looks like. It's also not just  
6 to Amy Bouno, but Gerry Dillon as well.

7 Q. In the third paragraph you start off stating,  
8 "The content below, only addresses scored items, and  
9 does not include pretest items." The word "content" is  
10 what I'm referring to.

11 "The Step 2 examination currently has 177  
12 different exam content specifications, the examination  
13 in 2007, also had 177 (Patient Safety was added since  
14 2007, and Heated Related illness was combined with  
15 Pituitary, hypothalamic disorders, both of which are  
16 under Endocrinology. Thus instead of one item being  
17 from both Heat related illness and one from Pituitary  
18 and hypothalamic disorders, 1 item is from Heat related  
19 illness or one from Pituitary and hypothalamic  
20 disorders." Then you go on to say, "Of the 177  
21 categories in 2007, specifications changed in 18. . ."

22 The question is: Is content categories, and  
23 then you label some of the subjects, are they all one  
24 and the same, or do you differentiate them to mean

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1 different things?

2 A. Part of the content specifications would be  
3 organ systems such as endocrine, if that's what you're  
4 asking.

5 Q. So, to compare the exams, your content is  
6 subject matter.

7 A. Yes.

8 Q. A little further down it says, "Thus, the  
9 change in the numbers of content categories. . ."? Do  
10 you see that?

11 A. Yes.

12 Q. "Thus the change in the number of content  
13 categories in which there was a change was 10 (5.6%)  
14 for reasons unrelated to timing. Of the 18 content  
15 categories where there was a change, 14 of content  
16 categories decreased by 1 (6 of these went from 2 in  
17 2007 to 1 in 2001; 2 went from 3 to 2; three went from  
18 5 to 4; 1 went from 6 to 7 and 1 went from 7 to 8; and  
19 there was one content category, Heat Related illness,  
20 that was combined with another content area, Pituitary,  
21 hypothalamic disorders)."

22 So again, categories, content categories, are  
23 they the same or are they different?

24 A. I think I've said it before: Content

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1 categories are organ system-based.

2 Q. A little further up you write, "Of the 177  
3 categories in 2007, specifications changed in  
4 eighteen." Specifications: What do you mean?

5 MS. HOLLAND: I'm going to object to  
6 the question.

7 DR. THOMAS: On what grounds again?

8 MS. HOLLAND: For the reasons I stated  
9 before.

10 BY DR. THOMAS:

11 Q. Sir, was this an analysis?

12 A. Yes, I was asked to render an opinion.

13 Q. Is it an analysis or an opinion?

14 A. Well, it was opinion based on analysis of the  
15 two examinations.

16 Q. Can you define "analysis" for me, please?

17 A. I believe it's in the document.

18 Q. In your words, what would you consider an  
19 analysis?

20 A. I already said it: Take the two exams, look  
21 at the content between them and how the examination  
22 specifications were -- what they were and different  
23 other categories, and look to see if the exams looked  
24 different or not or comparable.

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1 Q. Is that a subjective determination based on  
2 the person doing the analysis?

3 A. To some degree.

4 Q. Was any program used to run an analysis?

5 A. Yes. It was the -- it's where the numbers got  
6 generated from.

7 Q. What program would that be?

8 A. I'm not sure. Probably involved SPSS, but I'm  
9 not sure.

10 Q. Who ran the report or who ran the assessment?

11 A. I don't remember.

12 Q. Who would have entered the information into  
13 the program?

14 A. It would have been -- I don't know that  
15 anybody would have entered it. It's data files.

16 Q. Who would have run the data files?

17 MS. HOLLAND: Objection, vague.

18 Q. Who would be responsible for running the  
19 actual analysis of the two exams?

20 A. Probably someone in TD or scoring services.  
21 Either one would have done it.

22 Q. Who would set the parameters to state that the  
23 exams were comparable in that program?

24 MS. HOLLAND: Objection, vague and/or

12 (Pages 42 to 45)

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1 calls for confidential information.  
 2 BY DR. THOMAS:  
 3 Q. Confidential to say what the parameters are to  
 4 match a comparable exam?  
 5 MS. HOLLAND: Vague as to the  
 6 parameters. I don't understand what you mean.  
 7 BY DR. THOMAS:  
 8 Q. When first running a program, you have to set  
 9 certain standards, yes?  
 10 A. Depends what you're running it for.  
 11 Q. If you want to compare two exams through this  
 12 program --  
 13 A. That wasn't what the program did. The program  
 14 generated the numbers on there.  
 15 Q. So, the program ran individual numbers, then  
 16 you as an individual or any of your staff as an  
 17 individual compared them yourself?  
 18 A. Correct.  
 19 Q. And then came up with a determination as to  
 20 whether or not they would have affected the validation  
 21 exam?  
 22 MS. HOLLAND: Objection, vague.  
 23 Q. Who made the determination between the  
 24 comparability of these two exams?

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1 A. I did.  
 2 Q. What did you base that on?  
 3 A. The information in the email.  
 4 Q. With your expertise, given the content areas  
 5 and the changes in the number of questions in these  
 6 areas, can you determine how much it would have  
 7 affected a test-taker?  
 8 MS. HOLLAND: Objection, calls for  
 9 speculation.  
 10 DR. THOMAS: He's supposed to be the  
 11 expert running this.  
 12 MS. HOLLAND: It's unclear what's meant  
 13 by "affect on a test-taker" and it's also  
 14 irrelevant unless you're talking about you.  
 15 BY MR. THOMAS:  
 16 Q. Sir, if you could go to the last full  
 17 paragraph, "Overall"?  
 18 A. Okay.  
 19 Q. "Overall, the 2007 Step 2 for STP2 CO1607 and  
 20 the 2011 Step 2 for Step 2 CO-2385 are very similar  
 21 with differences which I would consider minimal."  
 22 Is that an analytic note there, or is that  
 23 your opinion based on what you saw?  
 24 A. It says "I would consider," so it's an

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1 opinion.  
 2 Q. It's your opinion. "The changes noted above,  
 3 more pictures and F types and the inclusion of heart  
 4 sounds, are changes consistent with the evolution of  
 5 the exam over four years."  
 6 Your understanding of the validation exam,  
 7 should it be comparable to what is current or what was  
 8 at the time of the examination that's being validated?  
 9 A. What is current.  
 10 Q. That's your understanding of the validation  
 11 exam?  
 12 A. Yes.  
 13 Q. If the validation exam is supposed to be  
 14 comparable to the form that was found to be  
 15 indeterminate, should the evolution have been in there?  
 16 A. Yes.  
 17 Q. So, you're saying that the . . .  
 18 A. If you're taking the examination in 2013, it  
 19 should meet the specifications in the examination of  
 20 2013.  
 21 Q. So, let me clarify: The validation exam is  
 22 supposed to be comparable to the form of 2007. So, my  
 23 question to you becomes, if that is --  
 24 A. It is comparable.

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1 Q. So, the evolution. . .  
 2 A. Those are minimal changes. If you go back and  
 3 look at the percentages, they were minimal changes.  
 4 Q. Minimal based on whose opinion?  
 5 A. Mine.  
 6 Q. Can you define "minimal"?  
 7 A. I'd probably say less than ten percent.  
 8 Q. Can you say you're assuming less than ten  
 9 percent, or you can say with reliability and validity  
 10 ten percent?  
 11 A. You're asking my opinion.  
 12 Q. Yes, I am asking your opinion because you're  
 13 directly the --  
 14 THE WITNESS: Well, can you read back  
 15 what he just said?  
 16 (The record was read by the court  
 17 reporter as requested)  
 18 THE WITNESS: I don't know what  
 19 reliability has to do with my opinion on -- you're  
 20 talking about exact -- yes. . .  
 21 BY DR. THOMAS:  
 22 Q. So, ten percent is an opinion you have. You  
 23 cannot say for a fact that it is only a ten percent  
 24 difference between the two exams.

13 (Pages 46 to 49)

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1 A. Well, I actually can say it's less than that.  
 2 You have the document in front of you.  
 3 Q. Could you please tell me exactly how you get  
 4 to the less than ten percent?  
 5 A. Well, let's see: "Thus the change in the  
 6 number of content categories in which there was a  
 7 change was ten (5.6%) for reasons unrelated to timing.  
 8 "Of the 18 categories" and there go the numbers on  
 9 examination of those 288 or 280 questions.  
 10 Q. So, you're saying that only -- how many  
 11 questions changed then?  
 12 A. I said the content categories of 5.6% that  
 13 were unrelated to timing.  
 14 Q. So, were there any related to timing?  
 15 A. It's stated above that.  
 16 Q. Could you please clarify?  
 17 A. "The Step 2 examination" -- tell me if I'm  
 18 going too fast for you -- "in 2007 was 368 items (46  
 19 per hour) of which 288 items were live; in 2011, the  
 20 Step 2 examination was 352 items (44 items per hour or  
 21 42 per hour, if the hour block contained a scientific  
 22 abstract or pharmaceutical advertisement, the block  
 23 contained 2 fewer items) of which 280 are live."  
 24 So, there were a change of -- two times eight

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1 -- sixteen questions.  
 2 Q. If there are less questions, is each question  
 3 worth more?  
 4 MS. HOLLAND: Objection.  
 5 Q. In general, if there are less questions on an  
 6 exam, percentage-wise would one question be worth more?  
 7 MS. HOLLAND: Objection.  
 8 DR. THOMAS: I didn't specify to you  
 9 USMLE. I'm asking him --  
 10 MS. HOLLAND: I'm going to instruct the  
 11 witness not to answer that question.  
 12 DR. THOMAS: Okay.  
 13 BY DR. THOMAS:  
 14 Q. So, this report is based on numbers you got  
 15 from a report from a program that was run, and it is  
 16 your opinion that it's comparable.  
 17 A. Correct.  
 18 Q. Okay. Was any analysis done on the validation  
 19 exam with regard to time on each question?  
 20 A. That data is collected. I don't think there  
 21 was any analysis done on it.  
 22 Q. In your tenure as your current position, how  
 23 many validation exams have you been asked to create for  
 24 your department?

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1 MS. HOLLAND: Objection. What's the  
 2 relevance?  
 3 DR. THOMAS: I'd like to know how much  
 4 experience he has in validation exams. Before, he  
 5 said he didn't even know how validation exams were  
 6 even run.  
 7 MS. HOLLAND: How many validation exams  
 8 --  
 9 DR. THOMAS: In the time of his tenure  
 10 how many has he had been asked to create.  
 11 MS. HOLLAND: The witness can answer.  
 12 THE WITNESS: I haven't been asked to  
 13 create any. It's the similar form to the other  
 14 hundred exams.  
 15 We do a hundred different examinations  
 16 a year, not just USMLE, so we're quite capable of  
 17 make very similar examinations for whatever  
 18 reasons it's needed.  
 19 BY DR. THOMAS:  
 20 Q. Multiple students were found to have  
 21 indeterminate scores for their USMLE exams because they  
 22 attended Optima University, and the multiple students  
 23 may have taken a validation exam.  
 24 Would your department have been notified to

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1 create validation exams for them through your manager?  
 2 A. Through USMLE they would have been, yes.  
 3 Q. Do you know of any request coming to your  
 4 manager during your tenure?  
 5 A. No others, and I'm not sure I would have  
 6 remembered this one if it hadn't been for the  
 7 deposition today.  
 8 Q. Do you have knowledge of any prior requests  
 9 for validations for students from Optima University for  
 10 validation exams to be created?  
 11 MS. HOLLAND: Objection, asked and  
 12 answered.  
 13 BY DR. THOMAS:  
 14 Q. Is June Farrell still employed in your  
 15 department?  
 16 A. Yes, she is.  
 17 DR. THOMAS: That's all for this  
 18 witness.  
 19 MS. HOLLAND: Okay. I do have a few  
 20 brief questions.  
 21 (EXAMINATION)  
 22 BY MS. HOLLAND:  
 23 Q. Dr. Haist, do you still have the report that  
 24 you prepared in front of you that's been marked exhibit

14 (Pages 50 to 53)

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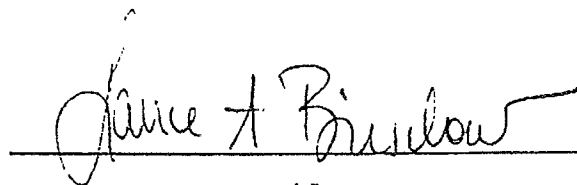
<div>Page 54</div> <div><div>1</div><div>one?</div><div>2</div><div>A. Yes, ma'am.</div><div>3</div><div>Q. And can you take a look for me at the last</div><div>4</div><div>paragraph of the first page of that report? At the</div><div>5</div><div>bottom it says NBME 13.</div><div>6</div><div>A. On the front page.</div><div>7</div><div>Q. On the front page. Do you see the last</div><div>8</div><div>paragraph?</div><div>9</div><div>A. Yes.</div><div>10</div><div>Q. Can you --</div><div>11</div><div>A. Oh, that ends in -- okay.</div><div>12</div><div>Q. The last paragraph, can you read what you</div><div>13</div><div>wrote in total?</div><div>14</div><div>A. "By content specifications, the 2007 to 2011</div><div>15</div><div>examination were essentially the same (93.8% of the</div><div>16</div><div>items in 2007 examination were from the same specified</div><div>17</div><div>content category as items in 2011 examination) and</div><div>18</div><div>there was only 1 new category (2 items in Patient</div><div>19</div><div>safety, two subcategories, 1 item in each subcategory).</div><div>20</div><div>The 93.8% should actually be higher since the number of</div><div>21</div><div>items on the examination decreased by 8; the adjusted</div><div>22</div><div>percentage of items that were from the same content</div><div>23</div><div>category is 96.4%."</div><div>24</div><div>Q. Okay. And are you testifying today in your</div></div>	<div>Page 56</div> <div><div>1</div><div>INDEX</div><div>2</div><div></div><div>3</div><div>WITNESS: STEPHEN HAIST, M.D., M.S.</div><div>4</div><div></div><div>5</div><div>By Dr. Thomas:</div><div>6</div><div></div><div>7</div><div></div><div>8</div><div>EXHIBITS</div><div>9</div><div>NO. DESCRIPTION PAGE</div><div>10</div><div>1 Email chain, with attachment to A.</div><div>11</div><div>Buono from S. Haist, M.S., M.D. 41</div><div>12</div><div></div><div>13</div><div></div><div>14</div><div></div><div>15</div><div></div><div>16</div><div></div><div>17</div><div></div><div>18</div><div></div><div>19</div><div></div><div>20</div><div></div><div>21</div><div></div><div>22</div><div></div><div>23</div><div></div><div>24</div><div></div></div>
<div>Page 55</div> <div><div>1</div><div>capacity as the vice-president for test development, or</div><div>2</div><div>are you testifying today as an expert witness?</div><div>3</div><div>A. I assume vice-president for test development.</div><div>4</div><div>MS. HOLLAND: I don't have anything</div><div>5</div><div>further.</div><div>6</div><div>DR. THOMAS: That's all.</div><div>7</div><div>(The deposition was concluded at 1:00</div><div>8</div><div>p.m.)</div><div>9</div><div></div><div>10</div><div></div><div>11</div><div></div><div>12</div><div></div><div>13</div><div></div><div>14</div><div></div><div>15</div><div></div><div>16</div><div></div><div>17</div><div></div><div>18</div><div></div><div>19</div><div></div><div>20</div><div></div><div>21</div><div></div><div>22</div><div></div><div>23</div><div></div><div>24</div><div></div></div>	<div>Page 57</div> <div><div>1</div><div>CERTIFICATION</div><div>2</div><div></div><div>3</div><div>-----</div><div>4</div><div></div><div>5</div><div>I hereby certify that the testimony and</div><div>6</div><div>the proceedings in the foregoing matter are contained</div><div>7</div><div>fully and accurately in the stenographic notes taken by</div><div>8</div><div>me and that the copy is a true and correct transcript</div><div>9</div><div>of the same.</div><div>10</div><div></div><div>11</div><div></div><div>12</div><div></div><div>13</div><div>Lance A. Brusilow</div><div>14</div><div>Registered Professional Reporter</div><div>15</div><div>Certified Realtime Reporter</div><div>16</div><div></div><div>17</div><div>The foregoing certification does not</div><div>18</div><div>apply to any reproduction of the same by any means</div><div>19</div><div>unless under the direct control and/or supervision of</div><div>20</div><div>the certifying shorthand reporter.</div><div>21</div><div></div><div>22</div><div>-----</div><div>23</div><div></div><div>24</div><div></div></div>

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1 CERTIFICATION

2 -----

3  
4  
5 I hereby certify that the testimony and  
6 the proceedings in the foregoing matter are contained  
7 fully and accurately in the stenographic notes taken by  
8 me and that the copy is a true and correct transcript  
9 of the same.

10  
11 

12 Lance A. Brusilow

Registered Professional Reporter

13 Certified Realtime Reporter

14  
15  
16 The foregoing certification does not  
17 apply to any reproduction of the same by any means  
18 unless under the direct control and/or supervision of  
19 the certifying shorthand reporter.

20  
21 -----

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brusilow+associates



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